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July 03, 2002

National Highway Traffic Safety Administration  
Docket Management Facility  
Room PL-401  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Re: **Docket No. NHTSA-02-12150; Notice of Proposed Rulemaking; -20**  
**Confidential Business Information; 67 Fed. Reg. 21198 (April 30, 2002)**

Dear Sir or Madam:

Workhorse Custom Chassis, LLC ("Workhorse") submits these comments in response to the agency's Notice of Proposed Rulemaking regarding confidential business information. Founded in 1998, Workhorse Custom Chassis is a manufacturer of strip chassis for the motor home and the commercial step van industries. Its step-van chassis is used by many of the nation's major commercial fleets; its motor home chassis is used by most major Class A motor home manufacturers. Workhorse also manufactures a completed "walk-in" cargo van, the FasTrack.

Workhorse appreciates this opportunity to provide comments on the Confidential Business Information NPRM. In particular, Workhorse would like to comment on the agency's proposed treatment of early warning information, the proposed new class determinations, the proposal to modify the duty to amend submissions, and proposed "request" that submitters redact personal information.

**Workhorse Opposes NHTSA's Proposed  
Treatment of Early Warning Information**

Workhorse strongly opposes the agency's proposed treatment of information that will be provided to the agency pursuant to the proposed early warning reporting system.

Section 3(b) of the TREAD Act, Pub. L. 106-414 (Nov. 1, 2000), which is codified at 49 U.S.C. § 30166(m)(4)(C), states:

(C) *Disclosure.* None of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.

Thus, *all* information provided to NHTSA pursuant to the early warning reporting system should be protected from disclosure, unless the Secretary of Transportation determines that disclosure of



that information will assist in carrying out Sections 30117(b) and 30118 through 30121. These sections pertain to proceedings involving a specific recall, defect or noncompliance. The protection provided by Section 4(c) is not limited to information that qualifies for confidential treatment, such as trade secrets and confidential business information, but applies to *all* early warning information submitted to the agency, whether or not the information qualifies for "confidential treatment." In this regard, the agency's Confidential Business Information NPRM conflicts with the TREAD Act.

Rather than providing this enhanced protection to all early warning information as the statute requires, the NPRM affords such protection only to the extent the information qualifies for confidential treatment under existing agency standards for granting confidential treatment. We believe this is in direct contravention of Section 30166(m)(4)(C). There is no authority for imposing an additional requirement of confidentiality on manufacturers as a prerequisite to obtaining the benefits that Congress sought to provide through Section 30166(m)(4)(C).

Workhorse notes the inclusion in proposed Section 512.23(a)(3) of the following language: "Early warning information collected pursuant to regulations promulgated pursuant to section 30166(m) of title 49 . . . shall not be disclosed under this section, unless the Administrator determines the disclosure of the information will assist in carrying out sections 30117(b) and 30118 through 30121 of title 49." 67 *Fed. Reg.* at 21205-21206. Workhorse is uncertain about the intended effect of this language. By including the language in Section 512.23(a)(3), the application of the TREAD Act protections is erroneously limited to "information that has been claimed or determined to be confidential." 67 *Fed. Reg.* at 21205 (proposed § 512.23(a)).

We acknowledge, but disagree with, NHTSA Chief Counsel's October 27, 2000 memorandum, in which the agency asserts that Congress intended the protections of 30166(m)(4)(C) to apply only to information that is first determined to be "confidential." The memorandum concludes that non-confidential information provided pursuant to the early warning reporting system may be disclosed without a determination under Section 30167(b) that disclosure will assist in carrying out the sections specified therein. As discussed above, this conclusion conflicts with the explicit language of 30166(m)(4)(C). Moreover, contrary to the statement in the memorandum, the remarks of Representatives Markey and Tauzin do not provide support for the agency's position.

The memorandum cites Rep. Tauzin's agreement with Rep. Markey's statement that the "special disclosure provision for new early stage information is not intended to protect [information] from disclosure that is currently disclosed under existing law...." But the memorandum fails to consider the remainder of Markey's statement. The complete text of Rep. Markey's statement reads:

Would the gentleman from Louisiana agree that this special disclosure provision for new early stage information is not intended to protect from disclosure that is currently disclosed under existing law *such as information about actual defects or recalls?*"



146 *Cong. Rec.* H9629 (daily ed. October 10, 2000) (statement of Rep. Markey) (emphasis added). Thus, Rep. Markey was expressing concern that information related to a *particular* defect or a recall be available to the public, as required under existing (i.e., pre-TREAD Act) law. Under Section 30166(m)(4)(C) and 30167(b), however, NHTSA would remain authorized to disclose early warning information if it concludes that disclosure will assist in carrying out Sections 30117(b) and Sections 30118 through 30121.

NHTSA should not adopt the proposed rule to the extent it conflicts with Congressional intent to protect all early warning information from disclosure absent a specific finding that disclosure will assist in carrying out 49 U.S.C. §§ 30117(b) and 30118 - 30121.

### **Class Determinations**

The agency is also proposing to add four new class determinations to Appendix B of Part 512, and has requested comment on whether the agency should include additional determinations (such as field reports and information concerning injury and deaths) in the final rule. For the reasons discussed in the previous section, the agency should not adopt any class determinations that would permit disclosure of early warning information such as warranty and property damage claims, and consumer complaints.

In any event, Workhorse fails to see the value of this information in the hands of consumers. There is a serious risk that the public will be misled by disclosing such raw, unverified data. For example, any industry comparisons would be meaningless, because companies use different methods to maintain and report their warranty and claims data. Disclosure of such information would only lead to consumer confusion and manufacturer harm.

Furthermore, Workhorse believes the agency should not adopt a class determination for field reports. Workhorse relies extensively on field reports from fleet owners to assist in identifying and correcting problems, including safety-related issues. Workhorse is concerned that a policy of customarily publicly disclosing field reports might reduce the accuracy of such reports, as fleet owners may, for competitive reasons, limit what they say in those reports. The expected reduction in quality of field reports due to regular public disclosure provides an independent justification for maintaining their confidentiality. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (information should not be released if disclosure of that information would result in the diminution of the reliability or quality of that information).

We urge NHTSA not to adopt the proposed class determinations. Evaluation of such information for purposes of confidential treatment should be made on an individual basis.

### **NHTSA's Proposal to Expand the Duty to Amend**

Part 512 currently contains a duty to amend a submission "if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment." 49 C.F.R. §512.4(i). Workhorse believes that the current rule makes



sense. It requires submitters to amend submissions when a failure to amend would, in effect, constitute a "knowing concealment," but it does not penalize inadvertent or inconsequential failures.

Proposed Section 512.10 of the NPRM would require amendment "whenever the submitter knows or becomes aware that the information was incorrect at the time it was provided to NHTSA, or that the information, although correct when provided to NHTSA, is no longer correct." 67 *Fed. Reg.* at 21204. We presume knowledge would include "constructive knowledge." The proposal omits the "knowing concealment" standard, thereby substantially increasing the burden on manufacturers - and especially smaller manufacturers like Workhorse - as submitters would be required to constantly evaluate their submissions for confidentiality. Under the proposal, this obligation would continue indefinitely. Workhorse urges NHTSA not to adopt this requirement, and to leave the existing rule in place.

#### **Redaction of Personal Information**

NHTSA is proposing to add a "request" that "any information of a personal nature . . . also be removed from the redacted version of the submitted materials." Proposed § 512.5(c). Workhorse believes that the agency should not shift to manufacturers the burden of redacting personal information. The burden imposed by this proposal could be extensive in the case of large information submissions involving warranty or claims data.

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Workhorse appreciates the opportunity to provide comments on the Confidential Business Information Notice of Proposed Rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Farash", written in a cursive style.

Alan Farash  
Vice President, Engineering